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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,767	02/25/2004	Daniel P. Hurt	2004-2148.ORI	2853
7590	08/25/2004		EXAMINER	
Mark J. Burns, Esq. Haugen Law Firm PLLP Suite 1130 121 South Eighth Street Minneapolis, MN 55402			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 08/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/786,767	HURT, DANIEL P.
	Examiner	Art Unit
	Christopher J. Novosad	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/22/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKittrick '627 in view of Hagaman *et al.*

With respect to claim 1, McKittrick '627 shows a hand tool 10 comprising:

- (a) a frame 12 having a distal portion 20 and a proximal portion 40,42, the proximal portion 40,42 having at least one proximal end 40,42;
- (b) a working element 14 operably coupled to a distal end 22 of the distal portion 20, the working element 14 having working portion 28,30,32 that is oriented along a first direction (unnumbered) with respect to the frame 12;
- (c) a handle means 50 coupled to the frame 12 at a portion (unnumbered) thereof intermediate the proximal end 40,42 and the distal end 22; and
- (d) a brace means 44 operably coupled to the proximal end 40,42 of the frame 12, the brace means 34 being configured to operably brace against an upper side of a user's forearm while the user operably grasps the handle means 50.

As to claim 2, the proximal portion 40,42 of the frame 12 diverges from the intermediate

portion (unnumbered) into two spaced apart and substantially parallelly disposed proximal members 40,42.

Regarding claim 3, the brace means 44 extends between the proximal members 40,42.

With respect to claim 4, the brace means 44 is fabricated from a resilient material (note the disclosure of “flexibility” in col. 4, line 19 which would necessarily indicate that a resilient material is present).

As to claim 5, the working element 14 is removably secured via 26,20,22,24 to the frame 12.

Regarding claim 7, the handle means 50 is fixed in an orientation along a second direction (unnumbered) with respect to the frame 12, which second direction (unnumbered) is substantially opposed to the first direction (unnumbered).

The claims distinguish over McKittrick ‘627 in requiring (1) the handle means to be pivotally coupled to the frame (as required in claim 1); (2) the handle means to include a coupling means for pivoting and locking engagement with the intermediate portion of the frame, the coupling means to have one or more pivoting engagement receptacles and one or more locking engagement receptacles integrally formed therewith (as required in claim 6); (3) the coupling means to be configured to lockingly engage to the frame such that the handle means is detachably fixed with respect to the frame (as required in claim 7); and (4) the handle means to be removably securable to the frame (as required in claim 8).

Hagaman *et al.* show (1) a handle means 2 pivotally coupled via 4-7 to a frame 1 (as required in claim 1); (2) the handle means 2 including a coupling means 4-7 for pivoting and locking engagement with the intermediate portion (unnumbered) of the frame 1, the coupling

means 4-7 having one or more pivoting engagement receptacles 4 and one or more locking engagement receptacles 7 integrally formed therewith (as required in claim 6); (3) the coupling means 4-7 being configured to lockingly engage to the frame 1 such that the handle means 2 is detachably fixed with respect to the frame 1 (as required in claim 7); and (4) the handle means 2 being removably securable to the frame 1 (as required in claim 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tool of McKittrick '627 with the coupling structure 4-7 of Hagaman *et al.* to allow the handle means 50 to be pivotally coupled to the frame 12 for greater user versatility and comfort.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

August 23, 2004